

Application No.: 09/986,975

REMARKS

Claims 1 and 2 are independent.

The Examiner has maintained the following rejections of independent claims 1 and 2 as follows: Claim 1 stands rejected under 35 U.S.C. § 102 as being anticipated by Misenhimer et al. '541 ("Misenhimer") and Ernster et al. '351 ("Ernster"); and claim 2 stands rejected under 35 U.S.C. § 102 as being anticipated by Ernster; further, claims 1 and 2 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wulf in view of Admitted prior art, Cotton et al. or Thuma '242, '837. These rejections are respectfully traversed for the following reasons. The Examiner's rationale for maintaining the pending rejections is set forth on pages 2-3 of the outstanding Office Action. Specifically, regarding the "blender" prior art, the Examiner apparently has interpreted the gear holding the blades as the claimed disk with the sharpened blades as the claimed protrusions. Regarding Misenhimer, the Examiner has alleged that "rotatably connected" can be broadly construed to read on the construction of Misenhimer, but suggests that the language from claim 2 (i.e., "disposed on the shaft") would differentiate claim 1 from Misenhimer.

According to the Examiner's interpretation, claim 1 has been amended similarly to claim 2 in that the stirring blade comprises a "disk rotatably disposed on a shaft of the rotary drive unit inside the washing tank." As implied by the Examiner in the outstanding Office Action, Misenhimer does not disclose such a construction. Specifically, the Examiner's broad interpretation of vanes 54 of Misenhimer (which are simply extensions from the inner wall of the tub 14) as the claimed stirring blade is obviated by the aforementioned amendment, in that the alleged stirring blade is not rotatably disposed on a shaft of the rotary drive unit inside the washing tank.

Application No.: 09/986,975

Further, the feature that "said disk having protrusions extending *only* upwardly therefrom" overcomes the Examiner's broad interpretation of the "blender" art. Specifically, the blender devices all appear to have at least one blade which extends downwardly from the alleged disk. Indeed, Wulf expressly discloses that "blades 132, 134 ... extend *downward* and outward from the ends of the base 130 [so that] blended and processed items are dislodged and forced upward from the bottom of the container" (col. 8, lines 20-30). In this regard, it is respectfully submitted that a downwardly extending blade is a fundamental characteristic of a blender to enable proper processing of food, so as to remove the alleged relevance of the blender art from the present invention.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed, either expressly or inherently (noting that "inherency may not be established by probabilities or possibilities", *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999)), in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the forgoing, it is submitted that the cited prior art does not anticipate claims 1 and 2, nor any claim dependent thereon. The Examiner is directed to MPEP § 2143.03 under the section entitled "All Claim Limitations Must Be Taught or Suggested", which sets forth the applicable standard for establishing obviousness under § 103:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. (citing *In re Royka*, 180 USPQ 580 (CCPA 1974)).

In the instant case, the pending rejection does not "establish *prima facie* obviousness of [the] claimed invention" as recited in the pending claims because the proposed combination fails the "all the claim limitations" standard required under § 103.

Application No.: 09/986,975

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as claims 1 and 2 are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

In this regard, it is respectfully requested that withdrawn claims 11-18 and 23-36 be rejoined as being dependent, directly or indirectly, on allowable claims 1 and/or 2.

Based on the foregoing, it is respectfully submitted that all pending claims are patentable over the cited prior art. Accordingly, it is respectfully requested that the rejections under 35 U.S.C. § 102 and 103 be withdrawn.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

Application No.: 09/986,975

including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Ramyar M. Farid
Registration No. 46,692

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 RMF:MWE
Facsimile: 202.756.8087
Date: May 16, 2006

**Please recognize our Customer No. 20277
as our correspondence address.**